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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/683,791
Filing Date: February 14, 2002
Appellant(s): PANELLI, EDWARD J.

Floron C. Faries
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 07 January 2008 appealing from the Office action mailed 18 May 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2002/0042751	SARNO	04-2002
6574742	JAMROGA	06-2003
6260021	WONG	07-2001
6820100	FUNAHASHI	11-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-5, 7-11, 13-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarno, (U.S. Pub. 2002/0042751 A1) in view of Jamroga et al., (U.S. 6,574,742).

2. As per claim 1, Sarno discloses an electronic information system to enable a supplier to provide a customer with economic information regarding the system provided by the supplier, the information system comprising:

a query page stored in the electronic information system, wherein the electronic information system provides the query page to the customer via an electronic communication system, wherein the query page comprises at least one question designed, when completed by the customer, to enable the information system to determine a customer's system usage over a period of time, (Sarno, figs. 1C, 1E, ¶ 15, 18); and

an application stored in the electronic information system, wherein the application establishes an expected cost reduction resulting from using a supplier's system based on the customer's system usage, (Sarno, figs. 1C, 1E, ¶ 12, 17).

Sarno fails to disclose a radiological image archiving system. However, such a system is well known in the art as evidenced by Jamroga, (Jamroga, col. 1, lines 48-65). It would have been obvious to one of ordinary skill in the art to combine Sarno and Jamroga. The motivation would have been to allow a seller to provide a cost justification supporting the purchase of IT software such as is disclosed by Jamroga to a buyer, (Sarno, Abstract, ¶ 4).

3. As per claim 2, Sarno discloses a system wherein the application establishes a payback period for purchasing a supplier's radiological image archiving system based on the expected cost reduction resulting from using the supplier's radiological image

archiving system and on cost of the supplier's radiological image archiving system, (Sarno, ¶ 125).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

4. As per claim 3, Sarno discloses a system wherein the application establishes a suggested radiological image archiving system based on the customer's radiological imaging system usage, (Sarno, ¶ 75) (disclosing the output of a business case based on user input for the sale and purchase of a particular vendor product that is considered to establish a suggested radiological image archiving system based on the customer's radiological imaging system usage).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

5. As per claim 4, Sarno discloses a system wherein the plurality of questions are designed to establish a desired digital storage capacity for the supplier's radiological image archiving system based on the customer's radiological imaging system usage, (Sarno, ¶ 151).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

6. As per claim 5, Sarno discloses a system wherein the application establishes the expected cost reduction resulting from usage of the supplier's system, (Sarno, Abstract).

Sarno fails to disclose that the cost savings are based on a reduction in radiological film usage. However, the preference for digital images over film in the field of radiology is well-known in the art as evidenced by Jamroga, (Jamroga, col. 1, line 15-col. 4, line 45).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1. and incorporated herein by reference.

7. As per claim 7, Sarno fails to disclose information such as a quantity of radiological examinations performed over a specified period of time by the customer's radiological image archiving system. However, such information is well-known in the art as evidenced by reference to Jamroga, (Jamroga, col. 13, lines 13-21).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

8. As per claim 8, Sarno fails to disclose a system wherein the specified period of time is one day. However, such a system is well-known in the art as evidenced by Jamroga, (Jamroga, col. 9, lines 23-33)(disclosing data stored and retrieved by time and date, thus easily producing the amount of radiological examinations per specified day).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

9. As per claim 9, Sarno fails to disclose a system wherein the query page is adapted to elicit a quantity of radiological images taken per radiological examination.

However, such a system is well-known in the art as evidenced by Jamroga, (Jamroga, col. 9, lines 23-33)(disclosing data stored and retrieved by delivery instruction sets per unique identifier identifying a radiological examination).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

10. As per claim 10, Sarno discloses a system wherein the query page is adapted to elicit a number of days a customer uses a radiological imaging system over a specified period of time. However, such a system is well-known in the art as evidenced by Jamroga, (Jamroga, col. 9, lines 23-33)(disclosing data stored and retrieved by time and date, thus easily producing the number of days a customer uses a radiological imaging system over a specified period of time).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

11. As per claim 11, Sarno discloses a system wherein the electronic communication system includes the Internet, (Sarno, ¶ 210).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

12. As per claim 13, Sarno discloses a computer program wherein the computer program is stored in a tangible medium, wherein the computer program is adapted to enable an electronic information system to establish a customer's expected cost

reductions over a period of time resulting from usage of a supplier's system, wherein the computer program directs the electronic information system to provide a query page to the customer via an electronic communication system, the query page being adapted to elicit a customer's system usage over the period of time. (Sarno, figs. 1C, 1E, ¶¶ 12, 17, 18)(a survey generator with a series of questions is a query page, and figs. 1C and 1E show information such as historic and future activity costs with associated savings projections).

Sarno fails to disclose a radiological image archiving system. However, such a system is well known in the art as evidenced by Jamroga, (Jamroga, col. 1, lines 48-65).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

13. As per claim 20, Sarno discloses a method of providing a customer with economic data regarding a supplier's system, the method comprising the acts of:

storing a query page adapted to elicit information from a customer on an electronic information system, (Sarno, ¶¶ 15, 18);

enabling a customer to access and complete the query page via an electronic communication system, (Sarno, ¶¶ 15, 18); and

storing a computer program operable to establish an economic benefit of purchasing a supplier's radiological image archiving system based on the radiological

imaging system usage information received from a customer on the electronic information system, (Sarno, figs. 1C, 1 E, ¶¶ 12, 17).

Sarno fails to disclose a radiological image archiving system. However, such a system is well known in the art as evidenced by Jamroga, (Jamroga, col. 1, lines 48-65).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

14. As per claims 23 and 24, Sarno discloses an electronic information system, comprising:

a query page stored in the electronic information system, wherein the electronic information system provides the query page to the customer via an electronic communication system, wherein the query page comprises at least one question designed, when completed by the customer, to enable the information system to establish an amount of resources consumed by a customer over a specified period of time, (Sarno, figs. 1C, 1 E, ¶¶ 15, 18); and

an application stored in the electronic information system, wherein the application establishes an expected reduction in cost, (Sarno, ¶¶ 12, 17).

Sarno fails to disclose that the cost savings are based on a reduction in radiological film usage. However, the preference for digital images over film is well-known in the art as evidenced by Jamroga, (Jamroga, col. 1, line 15-col. 4, line 45).

The reasoning and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 5 and incorporated herein by reference.

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

15. As per claim 25, Jamroga further discloses a system wherein the radiological imaging arching system provided by the supplier stores radiological images in a film-less format, (Jamroga, col. 1, line 15-col. 4, line 45).

The reasoning and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 5 and incorporated herein by reference.

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

16. As per claims 15-19, 21,22, 26-31 these claims contain the same or similar limitations as claims 1-5, 7-11, 13, 20, 23-25. Therefore, the rejections of those claims are herein incorporated by reference against claims 14-19, 21,22, 26-31.

17. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sarno in view of Jamroga, and further in view of Wong et al., (U.S. 6,260,021).

18. As per claim 6, Sarno fails to disclose a system wherein the application is written in Java script. However, Java script is well-known in the art as evidenced by Wong, (Wong, col. 12, lines 6-19).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

It would be obvious to one of ordinary skill in the art to combine Sarno and Jamroga with Wong. The motivation would have been to download GUI components as needed for the medical image and report information to be displayed, (Wong, col. 12, lines 6-19).

19. Claims 12, 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarno in view of Jamroga, and further in view of Funahashi, (U.S. 6,820,100).

20. As per claim 12, Sarno fails to disclose a system wherein the expected cost reduction comprises a reduction in optical discs used in a customer's existing radiological image archiving system. However, such a system is well-known in the art as evidenced by Funahashi, (Funahashi, col. 2, lines 52-59).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

It would be obvious to one of ordinary skill in the art at the time of the invention to combine Sarno and Jamroga with Funahashi. The motivation would have been to avoid having to delete old files to make room for new files, (Funahashi, col. 2, lines 47-51).

21. As per claim 32, Sarno fails to disclose a system wherein the application establishes an expected cost savings based on a decrease in optical disc consumption

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for archiving of radiological images. However, such a system is well-known in the art as evidenced by Funahashi, (Funahashi, col. 2, lines 52-59).

The statement of obviousness and motivation to combine Sarno and Jamroga is as provided in the rejection of claim 1 and incorporated herein by reference.

It would be obvious to one of ordinary skill in the art at the time of the invention to combine Sarno and Jamroga with Funahashi. The motivation would have been to avoid having to delete old files to make room for new files, (Funahashi, col. 2, lines 47-51).

(10) Response to Argument

In the Appeal Brief filed 07 January 2008, Appellant makes the following arguments:

A) Claims 1-5, 7-11, and 13-31 are *not* obvious under 35 USC 103(a) as being unpatentable over Sarno (2002/0042751) in view of Jamroga (6,574,742).

B) Claim 6 is *not* obvious under 35 USC 103(a) as being unpatentable over Sarno (2002/0042751) in view of Jamroga (6,574,742) in further view of Wong (6,260,021).

C) Claims 12 and 32 are *not* obvious under 35 USC 103(a) as being unpatentable over Sarno (2002/0042751) in view of Jamroga (6,574,742) in further view of Funahashi (6,820,100).

The Examiner will address the arguments in the order that they appear in the Appeal Brief.

Argument A:

In response to Applicant's argument that claims 1-5, 7-11, and 13-31 are obvious under 35 USC 103(a) as being unpatentable over Sarno (2002/0042751) in view of Jamroga (6,574,742). Examiner disagrees.

As discussed in the *KSR International Co. v. Teleflex Inc. et al.*, 127 S.Ct 1727 (2007), "[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ('[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness'). As our precedents make clear, however, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ" (emphasis added). Furthermore, *KSR* teaches that if the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, one of ordinary skill in the art would have recognized the results of the combination were predictable. In the present case the Sarno and Jamroga references together teach the features of the claimed invention. Since the elements would perform the same function in combination as they do separately, the combination of the elements are predictable and the claimed invention is obvious in view of Sarno and Jamroga.

Applicant emphasizes on pg. 6 of the 1/7/2008 Appeal Brief that the claims are directed to an *upstream* radiological *imaging* system while Jamroga is directed to *downstream* archiving system. Examiner notes that claim 1 only recites a "radiological imaging system" and makes no distinction between an upstream or downstream system. Applicant is reading in limitations into the claim from the specification. Furthermore, a "radiological imaging system" as taught by claim 1 should be given its broadest reasonable interpretation. One of ordinary skill in the art would recognize the method for storing and accessing digital medical images as taught by Jamroga as reading upon a "radiological imaging system."

As per claims 1, 13 and 20, Applicant argues on pg. 7 of the Appeal Brief that Sarno nor Jamroga fails to teach a query page designed to elicit or determine existing usage of a customer's radiological imaging system. In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Sarno teaches doing an economic cost analysis by gathering survey data (reads on "query page") including gathering data on "time" or how long a business case covers (Sarno; para. 18 and 135). Examiner admits that Sarno does not teach a "radiological imaging system" in particular. However, Examiner brings in the Jamroga reference to show that these types of

systems are old and well known in the art. The two applied references show that these elements are old and well known. The combination of the elements would have performed the same function as they did individually when put together, therefore the results of this combination are predictable.

As per the argument that Sarno and Jamroga also do not teach the limitations of claims 23 and 29, Examiner reasserts the above arguments. Applicant has again individually attacked the references where the rejection is based on the combination of the references.

Argument B:

In response to the argument that claim 6 is *not* obvious under 35 USC 103(a) as being unpatentable over Sarno (2002/0042751) in view of Jamroga (6,574,742) in further view of Wong (6,260,021). Examiner disagrees. Examiner has discussed above why the combination of Sarno and Jamroga teach the limitations of the independent claims. Wong is further brought in to teach limitations of dependent claim 6.

Argument C:

In response to the argument that claims 12 and 32 are *not* obvious under 35 USC 103(a) as being unpatentable over Sarno (2002/0042751) in view of Jamroga (6,574,742) in further view of Funahashi (6,820,100). Examiner disagrees. Examiner

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has discussed above why the combination of Sarno and Jamroga teach the limitations of the independent claims. Funahashi is further brought in to teach limitations of dependent claims 12 and 32.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Michelle Linh-Giang Le/

Examiner, Art Unit 3626

LLe

5/9/08

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